



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: NEIL STRATTON
APPLICATION No.: 09/801,536
PATENT No: 6,793,224
FILED: MARCH 8, 2001
ISSUED: SEPTEMBER 21, 2004
TITLE: TRUCK FOR SKATEBOARDS

United States Patent and Trademark Office
Mail Stop: PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RENEWED PETITION UNDER 37 CFR 1.378(b)

SHOWING (Item 8; Statement Showing Unavoidable Delay)

Dear Commissioner,

Below is a statement showing that the delay in timely payment of the 3-1/2 year maintenance fee for U.S. Patent No. 6,793,224 was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

In conducting further research for this request for consideration, new and relevant facts have come to light which are pertinent to this petition. These facts are provided below and are analyzed in light of legal precedent, specifically *Futures Technology Ltd. V. Quigg*, 684 F. Supp. 430, 7 USPQ2d 1588 (E.D. Va. 1988), a copy of which is included as Exhibit A.

I. Relevant Facts/Timeline

- June 28, 2001 - Petitioner, Neil Stratton was issued 300 of the total 1,000 shares of common stock in Carver Skateboards, Inc. On the stock certificate, presented as Exhibit B, Eyreick Williamson is listed as President of the company. Mr. Williamson acted as Chief Executive Officer, Chief Financial Officer, and Chairman of the Board of Directors of Carver Skateboards, Inc. through the time of the Dissolution of Assets on June 1, 2008, at which point equitable title in U.S. Patent No. 6,793,224 passed to shareholder Mr. Stratton.
- September 21, 2004 - U.S. Patent No. 6,793,224 issued on September 21, 2004.
- September 21, 2007 until March 21, 2008 - The 3-1/2 year maintenance fee window was open without surcharge.
- March 22, 2008 through September 22, 2008 – The 3-1/2 year maintenance fee window was open with surcharge.
- June 1, 2008 – Various assets of Carver Skateboards, Inc. were divided among its shareholders. In this transaction, U.S. Patent No. 6,793,224 passed to shareholder Mr. Stratton. During the transaction, Mr. Stratton specifically asked Mr. Williamson, Chief Executive Officer, Chief Financial Officer, and Chairman of the Board of Directors of Carver Skateboards, Inc. whether the renewal (maintenance) fee for U.S. Patent No. 6,793,224 was paid. Mr. Williamson, who as an officer and director of Carver Skateboards, Inc. had a fiduciary duty to Mr. Stratton as a shareholder of Carver

Skateboards, Inc. assured Mr. Stratton that the fee had been paid. Copies of Mr. Stratton's notes and of the June 1, 2008 Division of Assets agreement are included as Exhibits C and D, respectively. For clarity, the mention of the renewal in the notes is enclosed in the red figure.

- May of 2010 – Mr. Stratton, in the process of preparing a formal assignment document for the patent for recordation with the USPTO, contacted the USPTO in May of 2010 to inquire about assignment processes.
- June 21, 2010 - Believing that the Patent was still valid, the Petitioner recorded an assignment with USPTO, as Reel/Frame (024563/0654). Attached hereto as Exhibit E is a copy of the Notice of Recordation. Although reliance on statements by USPTO employees is generally insufficient grounds for reviving expired patents on the basis of unavoidable abandonment, Petitioner's attempt to formally assign the patent is indicative of Petitioner's state of mind and his reliance on Mr. Williamson's assurances that the maintenance fee had been paid and the patent was still in good standing.
- October 19, 2010 - Patent Counsel was in the process of preparing a letter on behalf of Petitioner, alleging infringement of the Patent by a competitor. In preparing the letter, Patent Counsel went to PAIR to copy a fresh set of claims from PAIR to incorporate into the letter. While on PAIR, Patent Counsel noticed that the status listed the patent as expired for failure to pay the maintenance fees. Patent Counsel immediately contacted Petitioner, who was shocked to hear that the Patent was expired. The fact that Petitioner was attempting to enforce the Patent is further indicative of Petitioner's state of mind and his reliance on Mr. Williamson's assurances that the maintenance fee had been paid and the patent was still in-force.
- October 20, 2010 - Patent Counsel and Petitioner contacted the USPTO inventor assistance center (Reference Number 1-77297035) to inquire about the status of the case.

- October 20, 2010 - Patent Counsel ordered the complete file wrapper from Thomson Reuters (Order Number: 1058551) to review the file wrapper and identify how the delay in payment of the maintenance fee occurred. Attached hereto as Exhibit F is a copy of the Order Confirmation from Thomson Reuters.
- October 21, 2010 - Counsel received the file wrapper from Thomson Reuters and began gathering exhibits and preparing the present Petition to Revive based on unavoidably delayed payment.
- November 1, 2010 – Counsel filed the initial paperwork for the present petition with the USPTO.

Also enclosed are supporting Statements/Declarations from the Petitioner, Mr. Stratton and Mr. Williamson as well as a Release Agreement signed by both Mr. Stratton and Mr. Williamson.

II. Legal Standard

This petition is governed by case law precedent. The standard set forth by the U.S. District Court in *Futures Technology Ltd. V. Quigg*, 684 F. Supp. 430, 7 USPQ2d 1588 (E.D. Va. 1988), which is specifically cited in MPEP 711.03(c)(II)(E), provides that where a patent application is held by a party with a fiduciary duty to the owner of the patent application and where that party breaches that fiduciary duty by allowing the patent application to become abandoned, the owner, as equitable owner, had a right to rely on the party with the fiduciary duty, and that the owner exercised diligence by inquiring about the status of the patent application while being assured that work was being done on the application, when in fact, the work was not being done.

(a) MPEP 2590(I):

As the language in 35 U.S.C. 41(c)(1) is identical to that in 35 U.S.C. 133 (i.e., “unavoidable” delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. 133. See *Ray v. Lehman*, 55

F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), *aff'd sub nom. Rydeen v. Quigg*, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991) (table), *cert. denied*, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the "unavoidable" delay standard.

(b) MPEP 711.03(c)(II)(E):

The question under 37 CFR 1.137 is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unavoidable or unintentional. When the applicant assigns the entire right, title, and interest in an invention to a third party (and thus does not retain any legal or equitable interest in the invention), the applicant's delay is irrelevant in evaluating whether the delay was unavoidable or even unintentional. See *Kim v. Quigg*, 718 F. Supp. 1280, 1284, 12 USPQ2d 1604, 1607-08 (E.D. Va. 1989). When an applicant assigns the application to a third party (e.g., the inventor/applicant's employer), and the third party decides not to file a reply to avoid abandonment, the applicant's actions, inactions or intentions are irrelevant under 37 CFR 1.137, unless the third party has reassigned the application to the applicant prior to the due date for the reply. *Id.*

Likewise, where the applicant permits a third party (whether a partial assignee, licensee, or other party) to control the prosecution of an application, the third party's decision whether or not to file a reply to avoid abandonment is binding on the applicant. See *Winkler*, 221 F. Supp. at 552, 138 USPQ at 667. Where an applicant enters an agreement with a third party for the third party to take control of the prosecution of an application, the applicant will be considered to have given the third party the right and authority to prosecute the application to avoid abandonment (or not prosecute), unless, by the express terms of the contract between applicant and the third party, the third party is conducting the prosecution of the application for the applicant solely in a fiduciary capacity. See *Futures Technology Ltd. v. Quigg*, 684 F. Supp. 430, 431, 7 USPQ2d 1588, 1589 (E.D. Va. 1988). Otherwise, the applicant will be considered to have given the third party unbridled discretion to prosecute (or not prosecute) the application to avoid abandonment, and will be bound by the actions or inactions of such third party.

(c) *Futures Technology Ltd. V. Quigg*, 684 F. Supp. 430, 7 USPQ2d 1588 (E.D. Va. 1988)

In determining what constitutes unavoidable delay, the Commissioner has found that the word "unavoidable" should apply to "ordinary human affairs, and [that it] requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887), cited with approval in In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912).

In the *Futures Technology* case, plaintiff exercised the diligence observed by prudent and careful men. [1] Plaintiff had a contract with Enertronics, by which Enertronics was to make patent applications and plaintiff was to remain the equitable owner of those applications. [2] Plaintiff had a right to expect Enertronics' performance under that contract. [3] When plaintiff became troubled by Enertronics' performance, plaintiff requested information from Enertronics regarding the status of the application which forms the basis of this case. [4] Plaintiff was given assurances by Enertronics that work was being done on the application, when in fact, such work was not being done. [5] When Enertronics finally assigned the application to plaintiff, the truth of the application's status was discovered, and plaintiff began petitioning for revival.

The Court in the *Futures Technology* case concluded, "When the equities of this case are considered, it is clear that plaintiff's delay in prosecuting this application was unavoidable. Accordingly, the Commissioner's decision should be reversed and plaintiff's patent application should be revived."

Specifically, the key point in the *Futures Technology* case was that the contract between the plaintiff and Enertronics created a fiduciary duty on behalf of Enertronics to act with a fiduciary duty with respect to the plaintiff.

(d) Fiduciary Duty - *Tritek Telecom, Inc. v. Superior Court*, 87 Cal. Rptr. 3d 455 (Cal. Ct. App. 2009)

Officers and Directors of corporations in California are held to a fiduciary duty standard with regard to their conduct of business on behalf of the corporation and its shareholders. See the accompanying table discussing the duties of Directors as well as Cal. Corp. Code § 204 and Cal. Corp. Code § 309.

Corporate directors owe a duty of care to the corporation and its shareholders and must serve in good faith in a manner such director believes to be in the best interest of the corporation and its shareholders. A court only is required to defer to the business judgment of decisions made by disinterested directors. *Tritek Telecom, Inc. v. Superior Court*, 87 Cal. Rptr. 3d 455 (Cal. Ct. App. 2009).

III. Analysis

The facts of the present case closely parallel those of the *Futures Technology* case in that:

- (1) Eyreick Williamson, as the Chief Executive Officer, Chief Financial Officer, and Chairman of the Board of Directors of Carver Skateboards, Inc. had a fiduciary duty to act solely in the best interest of the employer/principal, free of any self-dealing, conflicts of interest, or other abuse of the principal for personal advantage. Here, as evidenced by the statement of Mr. Williamson himself, he was aware that the maintenance fee was due and failed to make payment, to his personal advantage. In particular, during the course of the division of the assets among the shareholders, Mr. Stratton specifically inquired regarding whether the renewal/maintenance fee had been paid and Mr. Williamson, fully aware that the fee had not been paid, assured Mr. Stratton that the fee had been paid. As the particular transaction was one in which the corporation was assigning various assets to its shareholders, it was not a simple sale of assets to buyers, but rather a transaction in which Mr. Williamson had a fiduciary duty to act in the best interests of the shareholders, free of any self-dealing, conflicts of interest, or other abuse of the principal for personal advantage. Mr. Williamson breached that duty.
- (2) Mr. Stratton had a right to expect Mr. Williamson's performance under the contract, because as a shareholder, Mr. Stratton had a right to expect an officer and director of the corporation to act in the best interest of the shareholders, free of any self-dealing, conflicts of interest, or other abuse of the principal for personal advantage. Again, Mr. Williamson breached this duty, which Mr. Stratton had a right to expect would be fulfilled.

- (3) During the negotiation of the transaction (the Division of Assets), Mr. Stratton specifically asked Mr. Williamson if the renewal/maintenance fee had been paid. Mr. Williamson assured Mr. Stratton that the fee had, in fact, been paid. Again, as a shareholder Mr. Stratton had a right to expect an officer and director of the corporation to act in the best interest of the shareholders, free of any self-dealing, conflicts of interest, or other abuse of the principal for personal advantage. Again, Mr. Williamson breached this duty, which Mr. Stratton had a right to expect would be fulfilled.
- (4) As a result of his inquiry during the transaction, Mr. Stratton was given assurances that the renewal/maintenance fee had been paid, when, in fact, such payment (work) was not made (done). Again, as a shareholder, Mr. Stratton had a right to expect an officer and director of the corporation to act in the best interest of the shareholders, free of any self-dealing, conflicts of interest, or other abuse of the principal for personal advantage. Again, Mr. Williamson breached this duty, which Mr. Stratton had a right to expect would be fulfilled.
- (5) After the patent was finally assigned to Mr. Stratton, the truth of the patent's "expired" status was inadvertently discovered by Mr. Risso on October 19, 2010, during the preparation of a letter to an alleged infringer while using PAIR to copy a fresh set of claims to incorporate into the letter. Mr. Risso immediately contacted Mr. Stratton. On October 20, 2010, Mr. Risso and Mr. Stratton contacted the USPTO to inquire further regarding the status of the case. On the same day, Mr. Risso ordered a copy of the complete file wrapper from Thompson Reuters (Order Number: 1058551) in order to identify how the delay in payment of the maintenance fee occurred. The next day, on October 21, 2010, Mr. Risso received the file wrapper from Thompson Reuters and began gathering the necessary information to petition for revival of the '224 patent based on unavoidably delayed payment. The initial petition was mailed to the USPTO on November 1, 2010 and received on November 8, 2010 by the Office of Petitions. Thus, when the truth of the application's status was discovered Mr. Stratton promptly began petitioning for revival.

The facts of the present case closely mirror those of the *Futures Technology* case. In fact, it could be argued that the fiduciary duties owed to a corporation and its shareholders by its directors and officers is greater than that owed by contract, since those made by contract may be tailored to be more narrow than "acting in the best interest of the shareholders, free of any self-dealing, conflicts of interest, or other abuse of the principal for personal advantage." Thus, not only could it be argued, as the Court in the *Futures Technology* case concluded, "When the equities of this case are considered, it is clear that plaintiff's delay in prosecuting this application was unavoidable." It could be argued that because of the level of care owed by Mr. Williamson, Mr. Stratton, as a shareholder of Carver Skateboards, Inc., is even more deserving of a revival of this unavoidably abandoned patent.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity any patent issued thereon.



Cary Tope-McKay

July 25, 2011
Date



Neil Stratton

JULY 25, 2011
Date

FUTURES TECH. v. QUIGG, 684 F. Supp. 430 (E.D.Va. 04/26/1988)

- [1] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA,
ALEXANDRIA DIVISION
- [2] 87-1320-A
- [3] 684 F. Supp. 430, 1988.EVA.0000033<<http://www.versuslaw.com>>
- [4] April 26, 1988
- [5] **Futures Technology, Ltd., Plaintiff,**
v.
Donald J. Quigg, Commissioner of Patents and Trademarks, Defendant
- [6] Ross F. Hunt, Jr., Esquire, Larson & Taylor, Arlington, Virginia, for Plaintiff. , Paula P. Newett,
Assistant United States Attorney, U.S. Attorney's Office, Alexandria, Virginia, for Defendant.
- [7] Claude M. Hilton, United States District Judge.
- [8] The opinion of the court was delivered by: HILTON
- [9] MEMORANDUM OPINION
- [10] CLAUDE M. HILTON, UNITED STATES DISTRICT JUDGE.
- [11] This action was instituted by plaintiff to set aside the Final Agency Decision of the Commissioner of
Patents and Trademarks. The case is now before the court on the parties' cross motions for summary
judgment. As equitable considerations are involved, the facts of the case merit recitation here.
- [12] A patent application was filed in the Patent and Trademark Office on June 10, 1982, relating to an
invention entitled the "Portable Energy Cost Calculator." The inventor named on that application
assigned the invention to Enertronics Research, Inc. (Enertronics) on August 4, 1982. A patent
examiner rejected the application on June 18, 1984, and notice of the rejection was mailed to
Enertronics' attorney. Enertronics did not respond to the rejection within the three-month response
period specified by the examiner, and the application was deemed abandoned on September 19, 1984.
Notice of the abandonment was mailed to Enertronics' attorney.
- [13] Plaintiff had entered a contract with Enertronics on December 30, 1981 which called for Enertronics to
develop inventions and file patent applications for those inventions. This activity was to be carried out
with funds provided by plaintiff. Enertronics was to hold any patents it obtained in a fiduciary capacity
for plaintiff, and plaintiff was to be the equitable owner of the inventions and patent applications.
- [14] During 1984, plaintiff had become dissatisfied with Enertronics' performance pursuant their 1981
contract. Representatives of the parties held a meeting on July 16, 1984. Plaintiff sought to convince
Enertronics to assign the contract to Advanced Micro Products, Inc., whose officer, Timothy I.
Michels, was at the July 16 meeting. Enertronics' president indicated that his company would not
relinquish the development contract, that it was working on the application, and that it would complete
that work. At that time, Enertronics' president had already received notice of the rejection of the patent
application.

EXHIBIT A

- [15] Mr. Michels made other attempts, on behalf of plaintiff, to obtain information about the progress of the patent application. Enertronics was not forthcoming with such information. Enertronics' attorney refused to divulge information to Mr. Michels, based on the attorney's confidential relationship with Enertronics.
- [16] The attorney later revealed, in a statement accompanying plaintiff's original petition to revive, that he was instructed by Enertronics "to put all further patent efforts on hold." On a later date, Enertronics told the attorney: "We no longer need your services." Even later, the attorney learned that Enertronics and plaintiff were in litigation and that they were parties to a contract concerning inventions. At that time the attorney recommended the assignment of the application to plaintiff, which was executed on October 22, 1985.
- [17] Enertronics assigned the patent application which is the subject of this case to plaintiff on October 22, 1985. Plaintiff filed its original petition to revive the application, under 37 C.F.R. § 1.137(b), on December 18, 1985, maintaining that the application had been unintentionally abandoned. This petition was refused. Several other petitions to revive the application were made by plaintiff, pursuant to 37 C.F.R. § 1.137(a), maintaining that the delay in prosecuting the application was unavoidable. The Commissioner rejected the last of the requests for reconsideration in his Final Agency Decision on October 22, 1987.
- [18] Based on the facts of this case, and the applicable law, this patent application was not intentionally abandoned and that the delay in its prosecution was unavoidable. The contract made between plaintiff and Enertronics in 1981 established plaintiff as the equitable owner of this patent application. Plaintiff never intended to abandon this application. In fact, on numerous occasions, plaintiff, or its representatives, inquired of Enertronics as to the status of the application. However, due to circumstances surrounding the relationship between plaintiff and Enertronics, plaintiff was unable to timely prosecute the application.
- [19] In determining what constitutes unavoidable delay, the Commissioner has found that the word "unavoidable" should apply to "ordinary human affairs, and [that it] requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." *Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887), cited with approval in *In re Mattullath*, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912).
- [20] In this case, plaintiff exercised the diligence observed by prudent and careful men. Plaintiff had a contract with Enertronics, by which Enertronics was to make patent applications and plaintiff was to remain the equitable owner of those applications. Plaintiff had a right to expect Enertronics' performance under that contract. When plaintiff became troubled by Enertronics' performance, plaintiff requested information from Enertronics regarding the status of the application which forms the basis of this case. Plaintiff was given assurances by Enertronics that work was being done on the application, when in fact, such work was not being done. When Enertronics finally assigned the application to plaintiff, the truth of the application's status was discovered, and plaintiff began petitioning for revival.
- [21] When the equities of this case are considered, it is clear that plaintiff's delay in prosecuting this application was unavoidable. Accordingly, the Commissioner's decision should be reversed and plaintiff's patent application should be revived.
- [22] An appropriate order shall issue.
- [23] Alexandria, Virginia

[24] April 26, 1988

[25] ORDER

[26] In accordance with the attached Memorandum Opinion, it is hereby

[27] ORDERED that plaintiff's motion for summary judgment is GRANTED, and plaintiff's patent application shall be revived.

[28] Alexandria, Virginia

[29] April 26, 1988

19880426

© 1992-2004 VersusLaw Inc.

Click And Inc

Click Industries' new business division has spent the last 11 years helping entrepreneurs get their businesses off the ground. We offer affordable business formation services, as well as continuing business management tools such as DBA filing, foreign entity registration, registered agent services, amendments to articles of incorporation, and more.

<http://www.clickandinc.com>

Click and Copyright

Our copyrighting division provides copyright filing services for creative professionals who are serious about their work. Click and Copyright can help protect your intellectual property quickly and affordably, offering a variety of packages for all different types of work—websites, brochures, music, literature, artwork, and more.

<http://www.clickandcopyright.com>

Miller/Davis

Since 1894, Miller/Davis Company has been the leading provider of business and government forms. In addition to our ever-expanding library of both online and paper court forms and our proprietary software to help with legal form management, Miller/Davis offers a variety of business products, including corporate seals, certificates, and accounting supplies.

<http://www.millerdavis.com>

VersusLaw

VersusLaw leads the industry in providing fast and affordable online legal research materials. From case law and statutes to secondary materials, VersusLaw continually increases the scope and depth to its content for attorneys and legal researchers.

<http://www.versuslaw.com>

Legal Research Center

Minneapolis-based Legal Research Center offers legal research, knowledge management, and regulatory compliance services to attorneys in corporate and private practice throughout the world.

<http://www.legalresearch.com>

INCORPORATED UNDER THE LAWS OF THE STATE OF CALIFORNIA

JUNE 28, 2001



CARVER SKATEBOARDS, INC.

AUTHORIZED: 1,000 SHARES COMMON STOCK

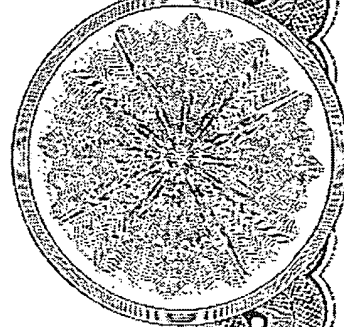
EXHIBIT B

This Certificate that
NEIL STRATTON
is the
registered holder of
THREE HUNDRED * * * * * Shares

CARVER SKATEBOARDS, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 9th day of July A.D. 20 02



GREG FAHLK
SECRETARY

EYREICK WILLIAMSON
PRESIDENT

15% on M sales

10% on RAX ?

8% on GI DIST

Paid monthly on
sales we collect

EQUIP = NO VALUE

Patent = small value / Paid ^{renewal} if not buy shares,

Goodwill = NO good will

* Biggest flaw now is
New Co / Old Co, should
be New Co / Eyreick

- Old Corp has no value: Liquidate, end, is Corp.
otherwise Old Co needs to stay alive for the 4 years...
- Assets distributed to officers: no tax

- Pay Eyreick as consultant agreement.
Value is in future, Payments are fully deductible to New Co.

- My half of Payables ^{Half} not to go on Camer's
'08 Books, as I need the deduction.

- E taxed @ ordinary tax rates if assets are sold,

- Liquidation: file last Return
: Certificate of Dissolution w/ secretary of State

- we contribute our assumed liabilities to New Co,
- List liquidation
- Contract needs to include \$X for 4 years
: no interest in company

EXHIBIT C

DIVISION OF ASSETS

6/1/2008

Carver Skateboards Inc, is a dissolved corporation and this is the record of the division of the remaining assets between the 3 partners. There is no monetary value assigned to any of the items, all partners mutually agree to dissolve the corporation and divide the remaining assets according to who made them or brought them to the company.

Eyreick Williamson:

- 4 Drill Presses
- 2 Coolant Systems
- 1 4" Belt Sander
- 3 Computers
- 2 Phones
- 1 Phone/Fax
- 3 Office Work Stations
- 2 Heavy Duty Work Benches
- Miscellaneous hand tools and drill bits

Neil Stratton


- Miscellaneous matched plate tooling
- Website address
- Domain name
- Patent #US 6,793,224 B2
- Patent #US 7,287,672 B2

Greg Falk

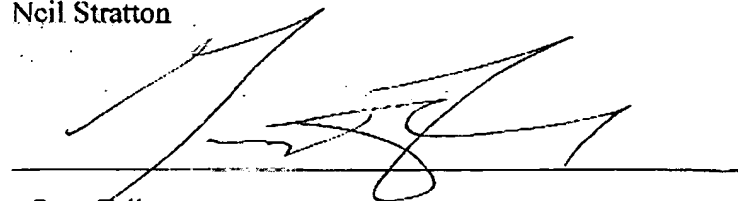
- Miscellaneous drill jigs



Eyreick Williamson



Neil Stratton



Greg Falk

EXHIBIT D



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE



700439607A

JUNE 22, 2010

PTAS

NEIL STRATION
111 SIERRA STREET
EL SEQUENDO, CA 90245

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 571-272-3350. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, MAIL STOP: ASSIGNMENT SERVICES BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 06/21/2010

REEL/FRAME: 024563/0654
NUMBER OF PAGES: 6

BRIEF: CERTIFICATE OF DISSOLUTION

ASSIGNOR:

CARVER SKATEBOARDS INC.

DOC DATE: 01/25/2010

ASSIGNEE:

CARVER INTERNATIONAL INC.
111 SIERRA STREET
EL SEQUENDO, CALIFORNIA 90245

SERIAL NUMBER: 09801536

FILING DATE: 03/08/2001

PATENT NUMBER: 6793224

ISSUE DATE: 09/21/2004

TITLE: TRUCK FOR SKATEBOARDS

SHAREILL COLES, EXAMINER
ASSIGNMENT SERVICES BRANCH
PUBLIC RECORDS DIVISION

Marcus Risso

From: russell.belicek@thomsonreuters.com
Sent: Wednesday, October 20, 2010 12:46 PM
To: mrisso@topemckay.com
Cc: ts.cm-fhservice@thomsonreuters.com
Subject: Order Number: 1058551; Docket Number: CSI001

Dear Marcus Risso,

The File History of U.S. Patent 6793224, requested on 10-20-2010 is not available in our inventory collection; therefore, we have requested a copy of the File from the USPTO. The file is located in the USPTO Franconia Storage Warehouse. We anticipate the delivery within 1-2 business days.

A notification will be provided to you if we experience any further delays.

Please respond with any further questions.

Thank you,

Russell Belicek
File History Customer Service Specialist

Thomson Reuters

1-800-445-9760 X 5722

russell.belicek@thomsonreuters.com
thomsonreuters.com

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

IRS CIRCULAR 230 DISCLOSURE: Any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. (ERO-1203d)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:	NEIL STRATTON
PATENT NO:	6,793,224
ISSUED:	SEPTEMBER 21, 2004
APPLICATION NO.:	09/801,536
FILED:	MARCH 8, 2001
ATTORNEY DOCKET NO:	CSI001
TITLE:	TRUCK FOR SKATEBOARDS

STATEMENT FROM WILLIAMSON

Dear USPTO Petitions Attorney,

I, Eyreick Williamson, am the former Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chairman of the Board of Directors ("Chairman"), and a shareholder of Carver Skateboards Inc. ("Carver"), which at the time was the assignee of U.S. Patent No 6,793,224, entitled, "Truck for Skateboard." I served in these capacities from the year 2000 through the time when Carver Skateboards Inc. divided its assets in 2008.

While acting as CEO, CFO, and Chairman of Carver, I also operated El Monte Non-Ferrous Foundry, at 245 Turnbull Canyon Road, Industry, CA 91754 ("the Foundry"), the same location as Carver Skateboards, Inc.

One of my duties as CFO of Carver was oversight of all financial matters, including payment of patent-related costs. Toward the end of my tenure at Carver, on June 1, 2008, I signed a "Division of Assets" agreement, in which the assets of the corporation were divided among its shareholders. This agreement is included as an appendix to this declaration as Appendix A. As of that date, patent 6,793,224 was effectively assigned to Neil Stratton. Thus, responsibility for payment of the maintenance fee during the portion of the maintenance fee "window" from September 21, 2007, through the asset allocation to the shareholders on June 1, 2008, was within my fiduciary responsibilities as CFO of Carver.

To the extent that this declaration contradicts my prior statements, I recant my former statements.

I said in my previous statement, "I believed our new law firm would contact us regarding any notices or fees." This was not true. While there was a time I did believe this was true, at the point at which Neil asked me about it during our negotiations I already knew it was due. At the time, I ran the Foundry where we cast aluminum parts for numerous customers, including Carver. At the time I needed cash to keep my foundry running while so much of my business was moving to India and China, so I used Carver's cash flow to make up the difference sometimes. Paying the patent maintenance fee was

something I fully intended to do, but between my cash flow problems and the extra work I had to take on when we let employees go, I was unable to afford the money or to give it the attention it required. As the foundry business continued to slow down my situation became worse, and I eventually had to sell the foundry and property, first run by my grandfather, in order to cover the debt and pay off creditors. I also operated Carver from the same location, using the same employees, offices and equipment, so the fluid cash exchange between the two businesses was common. During the negotiations with Neil I told him that the maintenance fee was paid because I fully intended to pay it in time for the transfer (Division of Assets) but I was not able to do it due to lack of funds. I did not want to have the patent be a problem in the negotiations we were engaged in, as there was a lot of dissatisfaction on Neil Stratton's part already and I didn't want to add to it by telling him the maintenance fee remained due. The negotiations were difficult, and focused on the liabilities that Carver had, which were substantial. I worked to help build Carver for many years and felt I needed to maximize my compensation during the split, especially as I was counting on that income to live on, because the foundry was no longer supporting me. Anything that would have reduced that value was not something I was going to divulge. After that there was so much going on that frankly, I didn't remember if I actually had paid the fee already or not. It was a crazy time for me, unfortunately. In retrospect, I recognize that in view of my roles as CEO, CFO, and Chairman of Carver, I had a fiduciary duty to ensure that the "renewal" (maintenance) fee was paid, and that I failed that duty to the detriment of Carver and its shareholders.

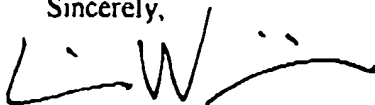
Payment of the maintenance fee was not the only legal fee item I kept secret. In fact, as I was aware, there was a large outstanding legal fee due to Christie Parker Hale (CPH) that resulted from a default judgment against Carver. In addition to these items, there were also other non-legal debts that I did not divulge.

As I said, during my negotiations for the Division of Assets, I assured Neil Stratton that the "renewal" (intended at the time to mean "maintenance fee") had been paid. This is evidenced by Neil Stratton's handwritten notes in Appendix B, which were taken during negotiations for the Division of Assets, and which provide evidence as to the contents of our discussions.

I regret this unfortunate situation, and I hope that the circumstances do not unfairly penalize Mr. Stratton for something I had assured him had been taken care of.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity any patent issued thereon.

Sincerely,



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: NEIL STRATTON
PATENT NO: 6,793,224
ISSUED: SEPTEMBER 21, 2004
APPLICATION NO.: 09/801,536
FILED: MARCH 8, 2001
ATTORNEY DOCKET NO: CSI001
TITLE: TRUCK FOR SKATEBOARDS

STATEMENT FROM STRATTON

Dear USPTO Petitions Attorney,

I, Neil Stratton, am petitioning your office to reinstate our patent, U.S. Patent No. 6,793,224, due to the unavoidable circumstances described below. I was the lead product designer and a shareholder of Carver Skateboards Inc. ("Carver"), which at the time was the assignee of U.S. Patent No 6,793,224, entitled, "Truck for Skateboard." I served in these capacities from the year 2000 through the time Carver Skateboards Inc. divided its assets in 2008.

During my time at Carver, Eyreick Williamson, served as the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chairman of the Board of Directors ("Chairman"), and was a shareholder. One of his responsibilities was ensuring that all monies owed by Carver were paid in a timely manner, including all legal fees.

During the period in which the maintenance fee was due, Carver ran into difficult times and all of the shareholders decided to part ways. After lengthy negotiations, we decided to divide up the assets of Carver among its shareholders according to the Division of Assets document shown in Appendix A.

It was during these negotiations that the shareholders began to notice the fraudulent activities of Eyreick. We discovered that he had embezzled cash from Carver to his own business, El Monte Non-Ferrous Foundry, which was located in the same building as Carver. We also began to discover unpaid bills that had been accumulating and which Eyreick failed to disclose, including a large payment due to Christie, Parker & Hale LLP. In my dealings with Eyreick, we generally did not discuss matters related to patent or other legal fees – I only discussed patent-related issues with Eyreick when there was a design issue involved.

Leading up to the shareholders decision to split up the company assets on June 1, 2008, the division of the company's assets were discussed, including this patent, and as a shareholder receiving a portion of the assets, I was assured that everything was current and in full force and that the patent renewal (maintenance) fee currently due had already been paid. I enclose a sheet with my notes taken during the negotiations leading up to the June 1, 2008 Division of Assets as Appendix B, showing my note that the renewal had been paid. I am not a businessman by training but a designer, and when I took over the operation it was sinking financially at the start of the current recession, so I had to quickly learn how to set up and run a manufacturing business under very difficult circumstances. I trusted that the patent had been renewed as I had been told, especially in light of Eyreick's position as the leader of our company and as a fiduciary to us as

NS


shareholders. This patent represents the core of our business. At the time, I had no reason to suspect that the fee had not been paid.

After the Division of Assets was signed on June 1, 2008, I formed a new corporation the next year. When I was able to, I set out to reassign the patent to the new corporation. The USPTO accepted my reassignment and recorded it May 7th of 2010. This confirmed to me that everything was current. I was not aware at the time that the USPTO would not alert me to an issue in recording a reassignment for an abandoned patent. I now understand that reliance on statements by the USPTO is insufficient grounds for reviving an unavoidably abandoned application, however, this was merely incidental – the reliance which caused me to think the patent was properly maintained was upon Eyreick, Carver's Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chairman of the Board of Directors ("Chairman"), who had a fiduciary duty to Carver to ensure the patent was properly maintained, and who failed that duty.

This patent is not only the protection for the signature product of my company but the result of many years of my personal work developing the idea into a product. As your office is surely aware, bringing new ideas to the market is not an easy thing to do, and in the face of many years of denial by the marketplace, my company and the innovative product I developed has finally begun to find acceptance. With success comes imitators, and we are experiencing this in increasing volume. There are currently at least eleven knock-off products directly imitating ours in overseas markets where we do not have patent protection. Some of these knock off companies are now coming to the USA and trying to infringe on our patented, American made invention. In fact, it was during the preparation for a Cease and Desist that our attorney, Marcus Risso of Tope-McKay & Associates, discovered that the patent was listed as abandoned and instantly alerted us to the problem. Our response had been immediate, and we have since set up proper systems to insure that this and our other intellectual properties are being timely cared for. I hope that we can emerge from this disaster whole again, and that with your help we can get back what we worked so hard to create.

Thank you for taking the time to consider my plea.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity any patent issued thereon.


Neil Stratton

JULY 25 2011
Date:

RELEASE AGREEMENT

This Release Agreement ("Agreement") is entered into by and between Carver International, Inc., 111 Sierra Street, El Segundo, CA 90254 ("Releaser") and Eyreick Williamson, 8312 Davista Drive, Wittier, CA 90602 ("Released"), as of the date indicated in the signature block below and is based upon the following facts:

A. Released was previously the President, CEO, and a shareholder of Carver Skateboards, Inc. 245 Turnbull Canyon Road, Industry, CA 91754, the assets of which were divided on June 1, 2008. Subsequently, Carver Skateboards, Inc. 245 Turnbull Canyon Road, Industry, CA 91754 was dissolved on September 23, 2009 and the assets of Neil Stratton and Greg Falk were moved to Carver International, Inc., 111 Sierra Street, El Segundo, CA 90254, held by Neil Stratton and Greg Faulk.

B. The parties hereto desire and intend, by way of this Agreement, to fully settle all claims which Releaser may have against Released on the terms set forth in this Agreement.

In consideration of the covenants and other matters set forth herein, it is agreed as follows:

1. Released will sign the attached Declaration and swear that the statements therein are true and correct to the best of Released's knowledge.

2. Subject to Released not violating the conditions itemized in Section 1 of this Agreement, Releaser, on behalf of itself, its affiliates, and their successors and assigns, hereby covenants not to sue Released, for any claims which Releaser may have against Released. Releaser agrees to indemnify Released from any claims arising from Releaser's breach of this covenant.

3. In consideration of the covenants and promises herein, Released, on behalf of itself, and its officers, agents, attorneys, representatives, assigns and/or predecessors or successors in interest does hereby forever release and discharge Releaser, from any and all claims, demands, causes of action, rights debts, controversies, damages, costs, losses, and expenses of every kind, nature, description or character, whether heretofore or now existing or hereafter existing, or which could or may be claimed to exist, of whatever kind, whether known or unknown, suspected or unsuspected, and liquidated or unliquidated. Further, Released expressly waives the protections of California Civil Code Section 1542, which reads as

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASED DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH TILE DEBTOR."

4. Released acknowledges that no representation, warranty, or promise not expressly contained in this Agreement has been made to Released, and further acknowledges that it is not providing this Agreement to Releaser on the basis of any representation, warranty or promise not set forth herein, either expressed or implied.

5. Released represents and warrants that it has had the opportunity to be fully advised by legal counsel concerning its rights and the effect of this Agreement and that it has either been represented by legal counsel or has voluntarily elected not to obtain advice of legal counsel in connection with this Agreement.

6. This Agreement has been freely and voluntarily entered into. No representations or promises of any kind other than those contained in this Agreement have been made by any party to induce any other party to enter into this Agreement. This Agreement may not be altered, amended, modified or otherwise changed except by a writing executed by each of the parties.

7. The parties agree to execute any and all additional documents necessary to carry out the terms and provisions of this Agreement.

8. Each party represents and warrants that it has complete power and authority to execute and enter into this Agreement and to so bind itself to the terms herein.

Miscellaneous.

a. This Agreement shall be construed under and governed by the internal laws of the State of California, without regard to its conflict of laws provisions.

b. This Agreement shall be binding upon and inure to the benefits of all parties and their successors, legal representatives and assigns.

c. This Agreement is deemed to have been drafted jointly by the parties. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

d. If any portion of this Agreement is declared by a court of competent jurisdiction to


be invalid or unenforceable after all appeals have either been exhausted or the time for any appeals to be taken has expired, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

- e. This
Agreement may be executed in any number of original counterparts. Any such counterpart, when executed, shall constitute an original of this Agreement, and all such counterparts together shall constitute one and the same Agreement.

This Agreement constitutes the entire agreement between the parties and, except as specifically set forth herein, supersedes any prior understandings, agreements, or representations between the parties, written or oral, that may have related in any way to the subject matter hereof.

Dated as of July 24, 2011

Releaser:
Carver Skateboard International, Inc.



By:

Name: Neil Stratton

Title: President & CEO

Released:
Eyreick Williamson



By:

Name: Eyreick Williamson

Title: Individual